

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS WS RICHEY,
Plaintiff,
v.
JOHN ALDANA *et al.*,
Defendants.

Case No. C05-5513 FDB

**ORDER ADOPTING
REPORT AND
RECOMMENDATION AND
DENYING DEFENDANTS'
MOTION TO DISMISS FOR
FAILURE TO PROPERLY
SERVE AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

The Magistrate Judge recommends in this 42 U.S.C. § 1983 civil rights action that (1) Defendants' motion to dismiss for failure to properly serve be denied and (2) Plaintiff's motion for summary judgment be denied. As detailed by the Magistrate Judge, Defendants received actual notice of this action and have gone beyond a special appearance to contest service. The Court has personal jurisdiction over Defendants. The Magistrate Judge also details the failure of Plaintiff to show that he is entitled to summary judgment on his First Amendment claim.

The Court, having reviewed Defendant's motion to dismiss and Plaintiff's motion for summary judgment, the Report and Recommendation of Magistrate Judge J. Kelley Arnold, objections to the Report and Recommendation, and the remaining record, does hereby find and

ORDER
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- (1) The Court adopts the Report and Recommendation;
 - (2) The Defendants' motion to dismiss [Dkt. #11] is **DENIED**;
 - (3) The Plaintiff's motion for summary judgment [Dkt. #10] is **DENIED**;
 - (4) The Clerk is directed to send copies of this Order to plaintiff, counsel for defendants who have appeared, and to the Hon. J. Kelley Arnold.

DATED this 13th day of June, 2006.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE